

REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 40-41, 43-47, and 53-58 were pending in the application, of which Claims 40 and 53 are independent. Claims 1-39 and 42 have been previously canceled without prejudice or disclaimer, and Claims 48-52 and 59-65 have been previously withdrawn. In the Office Action dated March 19, 2004, Claims 53 and 58 were rejected under 35 U.S.C. §102(e) and Claims 40-41, 43-47, and 54-57 were rejected under 35 U.S.C. §103(a). Following this response, Claims 40-41, 43-47, and 53-58 remain in this application. Applicant hereby addresses the Examiner's rejections in turn.

I. Change to Attorney Docket Number

Please note that the Attorney Docket Number for this application is now 06502.0443-00.

II. Rejection of the Claims Under 35 U.S.C. § 102(e)

In the Office Action dated March 19, 2004, the Examiner rejected Claims 53 and 58 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,802,301 ("*Dan*"). Claim 53 has been amended, and Applicant respectfully submits that the amendment overcomes this rejection and adds no new matter. Support for this amendment can at least be found on page 11 of the specification, lines 11-15.

Amended Claim 53 is patentably distinguishable over the cited art in that it recites, for example, reallocating bandwidth assigned to the plurality of users based on

a file attribute associated with data requested in the request for data. In contrast, *Dan* at least does not disclose the aforementioned recitation. Indeed, contrary to the Examiner's assertions *Dan* fails to rebalance loads by accounting for different types of data nor consider a file attribute when doing so. For example, *Dan* merely discloses rebalancing loads on disks to make bandwidth available. (See col. 1, lines 55-60.) In other words, reallocating bandwidth assigned to the plurality of users based on a file attribute associated with data requested in the request for data is not disclosed in *Dan*. Accordingly, independent Claim 53 patentably distinguishes the present invention over the cited art, and Applicant respectfully requests withdrawal of this rejection of Claim 53.

Dependent Claim 58 is also allowable at least for the reasons above regarding independent Claim 53, and by virtue of its dependency upon independent Claim 53. Accordingly, Applicant respectfully requests withdrawal of this rejection of dependent Claim 58.

III. Rejection of the Claims Under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected Claims 40-41, 43-47, and 54-57 under 35 U.S.C. § 103(a) as being unpatentable over *Dan* in view of U.S. Patent No. 6,396,816 ("*Astle*"). Claim 40 has been amended, and Applicant respectfully submits that the amendment overcome this rejection and add no new matter. Support for this amendment can at least be found on page 11 of the specification, lines 11-15. Dependent Claim 43 has been amended to place it in better form for consideration.

Amended Claim 40 is patentably distinguishable over the cited art in that it recites, for example, the computer reallocating bandwidth in response to a request for

data from one of the users over the communications interface wherein the reallocating is based on a file attribute associated with data requested in the request for data.

In contrast, *Dan* at least does not teach or suggest reallocating bandwidth in response to a request for data from one of the users over the communications interface wherein the reallocating is based on a file attribute associated with data requested in the request for data. As previously mentioned, *Dan* merely discloses rebalancing loads on disks to make bandwidth available without basing its rebalancing operation on specific criteria. (See col. 1, lines 55-60.) Furthermore, *Astle* does not overcome *Dan*'s deficiencies. *Astle* merely discloses allocating a minimum bandwidth to each information type and the remaining bandwidth being allocated based on priority, namely in the following order: audio, control data, and video. (See col. 7, lines 7-10.) In other words, *Astle* discloses allocating on information categories, not file attributes. Like *Dan*, *Astle* at least does not teach or suggest reallocating is based on a file attribute associated with data requested in the request for data. Accordingly, independent Claim 40 is patentably distinguishable over the cited art, and Applicant respectfully requests withdrawal of this rejection of Claim 40.

Dependent Claims 41, 43-47, and 54-57 are also allowable at least for the reasons above regarding independent Claim 40, and by virtue of their dependency upon independent Claim 40. Accordingly, Applicant respectfully requests withdrawal of this rejection of dependent Claims 41, 43-47, and 54-57.

IV. Conclusion

In view of the foregoing remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims. The preceding arguments are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: June 21, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Jakob NIELSEN

Application No.: 08/865,962

Filed: May 30, 1997

For: LATENCY-REDUCING
BANDWIDTH-PRIORITIZATION
FOR NETWORK SERVERS AND
CLIENTS

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) Group Art Unit: 2153

)
) Examiner: B. Edelman

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on June 21, 2004

Date


Sherleen Goodlette

Attachments:

1. Amendment (11 pgs)
2. Post Card to Acknowledge